

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA**

<b>ANNIE STEWART,</b>	)	
	)	
<b>Plaintiff,</b>	)	
	)	
<b>v.</b>	)	<b>8:15CV381</b>
	)	
<b>POPEYE'S CHICKEN,</b>	)	
<b>EON PROPERTIES, LLC,</b>	)	<b>ORDER</b>
<b>NIKHIL MEHTA, and</b>	)	
<b>JOHN DOE 1 AND 2 INCLUSIVE,</b>	)	
	)	
<b>Defendants.</b>	)	

This matter comes before the court *sua sponte* after review of the court file. The Federal Rules of Civil Procedure effective the date the plaintiff filed the complaint provides, “If a defendant is not served within 120 days after the complaint is filed, the court -- on motion or on its own after notice to the plaintiff -- must dismiss the action without prejudice against that defendant or order that service be made within a specified time.” [Fed. R. Civ. P. 4\(m\)](#). The court must extend the time for service for an appropriate period upon a plaintiff’s showing of good cause for the failure. [Fed. R. Civ. P. 4\(m\)](#). Additionally, NECivR [41.2](#) provides in pertinent part: “At any time, a case not being prosecuted with reasonable diligence may be dismissed for lack of prosecution.”

The plaintiff filed a complaint on October 19, 2015. ([Filing No. 1](#)). The court granted the plaintiff’s motion to for leave proceed *in forma pauperis* on October 20, 2015 ([Filing No. 4](#)), and on January 28, 2016, the court granted the plaintiff’s motion for service by U.S. Marshal ([Filing No. 7](#)). On February 1, 2016, summons was requested and issued as to defendant EON Properties, LLC. ([Filing No. 8](#)). The plaintiff did not seek or serve summons as to any other defendant. Summons was returned executed upon the defendant EON Properties, LLC, on March 7, 2016. ([Filing No. 10](#)). The plaintiff filed an amended complaint on March 22, 2016. ([Filing No. 9](#)). Since that date, no activity has

taken place in this suit and no defendant has made an appearance. The 120-day deadline for service of process for the remaining defendants has elapsed. The plaintiff failed to seek an extension of the deadline to complete service on the remaining defendants or provide an explanation for the delay. Under the circumstances, the plaintiff must make a showing of good cause for the failure of timely service or the action must be dismissed against the defendants Popeye's Chicken and Nikhil Mehta.

Additionally, the defendant EON Properties, LLC was served on March 7, 2016, and has not made an appearance. The plaintiff has taken no other action. It remains the plaintiff's duty to go forward in prosecuting the case. The plaintiff may, for example, seek entry of default pursuant or voluntarily dismiss the action, as appropriate. Under the circumstances, the plaintiff must make a showing of good cause for failure to prosecute or the action as to EON Properties, LLC, must be dismissed. Accordingly,

**IT IS ORDERED:**

The plaintiffs shall have until **on or before July 5, 2016**, to (1) file with the Clerk of Court evidence of service for Popeye's Chicken and Nikhil Mehta and (2) take appropriate action against EON Properties, LLC.; or show cause why this case should not be dismissed as against the defendants.

**DATED: June 21, 2016.**

**BY THE COURT:**

**s/ F.A. Gossett  
United States Magistrate Judge**